

Illinois Enacts New Employee Credit Check Law



Stating that a “job seeker’s ability to earn a decent living should not depend on how well they are weathering the greatest economic recession since the 1930s,” Illinois Governor Quinn formally introduced Illinois’ new *Employment Credit Privacy Act* (the “Act”). He also noted that the new Act will prevent employers from “denying a job or promotion based on information that is not an indicator of a person’s character or ability to do a job well.”

Under the Act, which took effect on January 1, 2011, Illinois employers cannot: (1) discharge, fail to hire or recruit, or otherwise discriminate against an individual because of the individual’s credit history or credit report; (2) inquire about an applicant’s or employee’s credit history; or (3) order or obtain an applicant’s or employee’s credit report from a consumer reporting agency. Moreover, an Illinois employer cannot retaliate against a person for exercising rights under the Act or helping another exercise rights under the Act. The protections under the Act cannot be waived and if an employer violates the Act, the employee or applicant may be entitled to injunctive relief, damages, and attorney’s fees.

The Act provides a limited exception permitting an employer to inquire about an employee or applicant’s credit history if satisfactory credit history is a “bona fide occupational requirement.” A bona fide occupational requirement exists if:

- (1) state or federal law requires bonding or other security covering an individual holding the position;
- (2) the duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2500 or more;
- (3) the duties of the position include signatory power over business assets of \$100 or more per transaction;
- (4) the position is a managerial position which involves setting the direction or control of the business;
- (5) the position involves access to personal or confidential information, financial information, trade secrets, or State or National security information;

(6) the position meets the criteria in administrative rules, if any, that the U.S. Department of Labor has promulgated to establish the circumstances in which a credit history is a bona fide occupational requirement; or

(7) the employee's or applicant's credit history is otherwise required by or exempt under federal or State law.

If you have any questions regarding this new Act, please do not hesitate to contact David N. Michael at dmichael@gouldratner.com or 312-236-3003.